



CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date: September 11, 2007
Land Use Action Date: November 13, 2007
Board of Aldermen Action Date: November 19, 2007
90-Day Expiration Date: December 10, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Robert Merryman, Senior Planner

SUBJECT: **Petition #232-07** of **AMERADA HESS CORPORATION/DONALD F LUNNY, JR TRUSTEE OF LUNNY REAL ESTATE TRUST** for SPECIAL PERMIT/ SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE and AMENDMENT TO PREVIOUS BOARD ORDERS to change service station accessory use from automotive repair to retail convenience; change an existing full service gasoline island to all self service; waivers from the parking ordinance the light ordinance and the sign ordinance located at **2370 COMMONWEALTH AVENUE**, Ward 4, on land known as Section 41, Block 9, Lot 1A, containing approximately 15,904 square feet of land in a Multi-Residence 2 District.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

Amerada Hess et al are requesting a special permit, extension of non-conforming use and amendment to existing Board Orders to allow for the a proposed alteration of the existing service station with automotive repair as the accessory use to a complete self service gas station with a "Hess Mart" retail convenience store as the accessory use. The petitioners are also requesting waivers of the parking ordinance, the light ordinance, and the sign ordinance.

I. BACKGROUND

The site has been used as a service station since 1923, when the Board of Aldermen granted approval for this use. Board Order #609-59 allowed the relocation of a pre-existing standing sign. Board Orders #699-65 and #590-76 allowed the replacement of this sign. Petition #180-75 to rezone the site to a Business 2 Zone was denied. Board Order #157-92 allowed the erection of a canopy facing Commonwealth Avenue and the conversion of that island to self-service as long as the repair business was ongoing and it did not include the Auburn Street (full service) pump. Zoning Board of Appeals Decision #21-92 allowed a variance from the front setback requirements for the above referenced (Com. Ave.) canopy.

Board Order #1-01 allowed a second full service pump to be constructed on the Auburn Street side and Board Order #226-02 allowed the erection of a canopy over the Auburn Street pumps. Zoning Board of Appeals Decision #30-02 also allowed a variance from the front setback requirements for the Auburn Street canopy.

The petitioners have added signage over the years without approval from the Board of Aldermen. The last sign approved by the Board was a free standing sign in 1976 as noted above. The existing "Mobil" sign on the Commonwealth Avenue canopy and the "Mobil Mart" sign on the façade are not allowed as-of-right in a Multi-Residence District. These signs have never received the necessary Board approvals and are deemed to be non-compliant.

The rear portion of the site was utilized for the storage of Boston Gas Company vehicles in the 1960s and as a U-Haul dealership in 1974. A 1967 report by one of the City's Local Building Inspectors indicated that the site contained over 16 unregistered cars. In the recent past, complaints from neighbors were focused on car storage and parking on the sidewalk and berm areas along Auburn Street. Currently, vehicles are stored on the rear portion of the site behind a fence and parking is prohibited on Commonwealth Avenue, along the front of the site. The petitioners have not maintained the landscaping required in previous Board Orders.

II. ELEMENTS OF THE PETITION

Hess is planning to convert the existing ½ self service, ½ full service, gasoline service station with auto repair accessory use to a complete self service gas station with a convenience store as the accessory use through a long term lease with station owner Donald F. Lunny, Jr. Other than façade changes and signage requests, the major exterior change will be the removal of the stockade fence on Auburn Street and replacement with a 6-stall parking lot with a walkway and landscaping. The petitioners stated that the existing red brick façade would remain and that the upper façade would remain white with the "Hess Emerald Green" stripe and "Hess Express" sign added. A new metal seam roof would also be added ("Hess Emerald Green" assumed). The proposed signage will *significantly* exceed the maximum 15 square feet allowed in a Multi-Residence District.

III. ZONING RELIEF SOUGHT

The petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-24(d) for Special Permit for self service gas station with an accessory convenience store and signage and parking facility;*
- *Section 30-24(d) for Special Permit in order to amend Board Orders #609-59,699-65,590-76,157-92, 1-01, 226-02 for self service gas station with an accessory convenience store and signage and parking facility;*
- *Section 30-24(d) for Special Permit in order to amend Board Order #1-01 Condition #1 pertaining to limitations on self service gasoline pumps;*
- *Section 30-23 for Site Plan Approval;*
- *Section 30-23 for Site Plan Approval in order to amend the site plans of Board Orders #609-59,699-65,590-76,157-92, 1-01, and 226-02;*
- *Section 30-21(b) for an Extension of Nonconforming Use/Structure to allow the alteration/extension of a nonconforming use for the a proposed alteration of the existing service station with automotive repair as the accessory use to a complete self service gas station with a retail convenience store as the accessory use;*
- *Section 30-20(e)(4) &(l) for a special permit for a new freestanding sign;*
- *Section 30-20 (e)(4) &(l) for a special permit for a new freestanding sign exceeding 15 sq. ft. allowed in a residence district;*
- *Section 30-20(l) for a special permit for a new freestanding exceeding 35 sq. ft. in area, and 16 in height requirements;*
- *Section 30-20(l) for a special permit for a new price panels underneath the freestanding sign;*
- *Section 30-20(e)(4) &(l) for a special permit for 2 new wall signs exceeding both the maximum of 1 wall sign and the maximum of 20 sq. ft. in area allowed for a nonconforming use in a residence district;*
- *Section 30-20(e)(4) &(l) for a special permit for third new wall sign placed on the Commonwealth Avenue canopy further exceeding both the maximum of 1 wall sign and the maximum of 20 sq. ft. in area allowed for a nonconforming use in a residence district;*
- *Section 30-20 for a special permit for a directional sign exceeding the 3 sq. ft. requirement;*
- *Section 30-19(m) of the Zoning Ordinance, which allows the Board of Aldermen to grant a special permit to allow for exceptions to the dimensional requirements for parking if it is determined that compliance is impracticable due to the nature of the site and that such exceptions would be in the public interest. The following waivers are required through this section:*
 - a. *Sec. 30-19(h)(1) stall setback requirement from 7.5 ft. side yard setback;*
 - b. *Sec. 30-19(h)(2)(b) stall length requirement of parking stalls;*

- c. *Sec. 30-19(h)(2)(c) stall length requirement of handicapped parking stall;*
- d. *Sec. 30-19(h)(5)(a) for 2 parking stalls in tandem blocking access to the dumpster;*
- e. *Sec. 30-19(i)(1) requirement for minimum width of perimeter landscape screening;*
- f. *Sec. 30-19(i)(1)(a)(i) requirement for perimeter landscape screening;*
- g. *Sec. 30-19(j)(1)(b) requirements to allow lighting to cross on to adjacent sidewalk and roadway; and*
- h. *Sec. 30-19(h)(1) requirements to allow light poles within the setback.*

The City's Chief Zoning Code Official has completed his review of this application and a copy of his memorandum, dated August 7, 2007 is attached to this document. (SEE: ATTACHMENT "A")

IV. **SIGNIFICANT ISSUES FOR CONSIDERATION**

In reviewing this petition the Board of Aldermen should consider the following:

- *Whether the proposed alteration of the existing partial self service gas station with the automotive repair accessory use to a complete self service gas station with a retail convenience store as the accessory use will have any adverse affects on the abutters or the immediate neighborhood;*
- *Whether the change to the a proposed complete self service gas station with a retail convenience store as the accessory use would be substantially more detrimental to the neighborhood than the existing nonconforming partial self-service gas station with the automotive repair accessory use;*
- *Whether the increased number and sizes of the proposed signs would be compatible with the residential neighborhood; and*
- *Whether the increased number and sizes of the proposed signs would be comparable to other service station signage.*

V. **CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

A. Site

The site is located at the western end of the City where Auburn Street intersects Commonwealth Avenue at an angle from the south. The site is comprised of a triangular parcel containing approximately 15,904 square feet of land. A single story, rectangular, concrete block building is located at the approximate center of the site. The facade of this building, which faces Commonwealth Avenue, is covered with brick veneer and white painted siding. This building contains three (3) service bay doors facing Commonwealth Avenue.

The remaining portion of the site is an open area of asphalt that surrounds the building. The front area contains both full service, and self service pump islands. The rear area of the site is paved and is utilized for vehicle storage. The existing standing sign is located on a small island facing the intersection. There are

currently five (5) curbcut openings along the site perimeter. A board fence has been added at the southeastern corner of the building to provide some screening of the rear car storage area.

B. Neighborhood

The site is abutted to the northwest by Commonwealth Avenue. The Boston Marriott Newton Hotel is located across Commonwealth Avenue to the northeast. A six (6) building apartment complex is located along the site's eastern boundary line. The Auburndale Village Center is approximately 6 blocks farther east along Commonwealth Avenue. Just west of the site are the Charles River, Route 128 and the entrance to the MassPike. The site is located in a triangular shaped Multi-Residence 2 District.

VI. ANALYSIS

A. Technical Considerations/ Parking Requirements

The site is a non-conforming use in a Multi-Residence District.

The following compares the proposed changes with the ordinance requirements for the Multi-Residential 2 District and the existing non-conforming use, per Section 30-15 Table 1, as follows:

	REQUIRED	Existing	Proposed
Min. Lot Size	7,000 s.f.	15,904 s. f.	15,904 s. f.
Min. Frontage	70 ft.	380 ft.	380 ft.
Min. Setback			
Front	25 ft.	24.5 ft.	24.5 ft.
Side	7.5 ft.	14 ft.	14 ft.
Rear	N/A		
Max. Stories	2 ½ stories	1 story	1 story
Max. Height	30 ft.	14.5 ft.	18.8 ft.
Max. Floor Area Ratio	0.4	0.115	0.123
Max. Lot Coverage	30%	12%	12%
Min. Open Space	50%	9%	12%

As the above table depicts the proposed Hess Mini Mart would comply with the technical requirements of Section 30-15 Table 1, except the minimum front setback, lot coverage and open space, all of which are pre-existing non-conforming. The petitioners' plans depict that the open space would increase by 4% in this proposal.

B. Parking Requirements

A technical parking analysis of the existing and proposed parking facility is provided per Section 30-19, as follows:

	REQUIRED	EXISTING	PROPOSED
Min. Number Stalls	1 stall/ 300 s.f. = 7 stalls 1 per 3 employees =1 stall	4 stalls (20 vehicles in storage yard)	9 stalls
Min. Setbacks			
Front	25 ft.	0ft.	6 ft.
Side	7.5 ft.	0 ft.	5 ft. (front) 2 ft. (back)
Rear	N/A.		
Min. Stall Length	19 ft.	15 ft.	18 ft.
Min. Stall Width	9 ft.	8 ft.	9 ft.
Driveway Width	20-25 ft.	12 ft.	25-37 ft.
Min. Aisle Width	24 ft.	None	24-32 ft.
Handicapped Stall	1	N/A	1
Handicap stall size	12 ft. x 19 ft.	N/A	12 ft.x18 ft.
Landscape Screen	3 ½ ft. high evergreen	None	Yes

The proposed 9 stall parking facility does not meet the requirements for front and side setbacks, stall length, stall width, maximum driveway width, maximum aisle width and the minimum width of the handicapped stall. The petitioners have requested waivers for the above dimensional requirements from the parking ordinance.

The Planning Department believes that the proposed parking facility can be safely accessed by the customers of the gas station and mini mart with the dimensions proposed on submitted plans.

C. Site Improvements

The petitioners previously upgraded the pumps and gasoline storage tanks to comply with the federal environmental regulations. The last improvement was the Auburn Street canopy approved in 2002. The petitioners have also improved the site with landscaping and, until recently, had maintained these plantings.

The site is accessed by five (5) large curb cuts averaging approximately 36 feet in width. These 5 curb cuts total 182 feet and are excessive for this site. Though this number of curb cuts seems disproportionate to the size of the parcel, the petitioners have indicated that these curb cuts are used as multiple access points by customers and for the maneuvering of fuel delivery trucks. The petitioners have proposed reducing one of the Auburn Street curb cuts from 38 feet to the required 24 ft. The petitioners will be removing asphalt area for additional

landscaping especially on the Auburn Street frontage and along the abutting apartment building lot line. Since this service station is located at the western gateway or entrance to the City, its general appearance is important.

B. Site Engineering

The City Engineer is expected to complete his review of this petition prior to the public hearing.

C. Fire Department

The Assistant Fire Chief has reviewed and approved the submitted plans. (*SEE: ATTACHMENT "B"*)

D. Extension of Nonconforming Use

The existing gasoline service station (partial self-serve) with auto repair use is nonconforming in the Multi Residence 2 District. The plans depict maintaining the existing non-conforming building with changes to the façade and roof in order to add window space and the "Hess Shamrock Green" roof for corporate identification. The Shamrock Green band would also be placed on the 2 canopy facades. The rear of the building will become a main entrance, which should be a vast improvement from the repair storage yard.

The petitioners are proposing to add six (6) parking stalls on the Auburn Street side that will not meet the City's ordinance requirements. Waivers have been requested. These stalls as well as the redesigned aisles should not be substantially more detrimental than the existing parking (storage) facility configuration.

E. Landscaping

The submitted landscape plan depicts the removal of 4 trees and retention of 10 trees, but does not propose planting any additional new trees. The petitioners will need to comply with the City's Tree Preservation Ordinance and should contact the Tree Warden as soon as possible.

It is important to note that four (4) existing street trees (Japanese Maples) have been removed or destroyed (via auto accident) recently. The petitioners should be expected to replace them, as they are shown on the petitioners' landscape plans that were planted by the owner under past Board Orders.

The Planning Department believes that the new parking area should be adequately screened from residential abutters, as the landscape plan depicts a total of 135 new shrubs to be planted.

The petitioners have clearly indicated that they are willing to work with the Planning Department to upgrade the site and plantings. Compliance with the City's Tree Preservation Ordinance and a revised landscape plan, that includes replacing the 4 Japanese Maples that were removed from the City's berm, should be provided prior to this item being scheduled for Working Session.

The latest Photometric Plan includes the removal of the 4 – 16 ft high 175 watt area lights with replacement by 18 – 3.5 ft. high bollard lights. The submitted lighting plan depicts minimal light spillover onto city streets and the abutting apartment building grounds. The Planning Department believes that this light spillover is de minimus and should not have any appreciable effect on the street or neighbors.

F. Signage

A technical analysis of the existing and proposed signage is provided per Section 30-20, as follows:

	REQUIRED	Existing	Proposed
Free Standing Sign	One Sign		Two Signs
Max. Size	15 sq. ft.	35 s.f.	42.4 s.f.
Max. Height	16 ft.	17 ft.	17.66 ft.
Wall Signs	One Sign		Three Signs
Canopy	20 s.f.	Non Compliant	23.3 s.f.
Auburn Street	-----		10.5 s.f.
Commonwealth Ave	-----	Non Compliant	19.1 s.f.
	20 s.f.		==52.9 s.f.
Max. Directional Signs	3 s.f.	-----	6.2 s.f.
TOTAL S.F. of signs on site	41 s.f.	-----	103 s.f.

The petitioners are proposing free-standing sign that will exceed the height and size requirements of the Sign Ordinance. The Planning Department believes that the proposed signage is excessive for a service station in this or any zoning district in the City, especially a Multi-Residence District. The City of Newton has historically not allowed signage on service station canopies. Such signs were always viewed as free standing signs that required Board of Aldermen approval. Now that canopy signs are being considered as “wall” signs (*See Zoning Review Memorandum*), they may begin to proliferate (allowed as-of-right) in commercial districts.

The petitioners are proposing 2 directional signs. A “Do Not Enter” sign that will be located at the one way drive will be 6.2 sq. ft. which is larger than the 3 sq. ft. allowed. The second Sign is an as-of-right sign and would be a smaller than allowed Handicapped Parking sign. The Planning Department believes that the proposed directional signs are appropriate for this site and location.

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement

The proposed redesign of the service station parking facility should not impact the convenience and safety of vehicular and pedestrian movement. Reducing one of the curb cuts should help pedestrians on Auburn Street. The Planning Department believes that as designed the mini mart parking area with the one way circulation, handicapped parking stall and pedestrian walkway will provide better on site circulation.

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage

The City Engineer is expected to complete his review of this petition prior to the public hearing.

3. Screening of parking areas and structure from abutting properties

The landscape plan depicts adequate screening of the parking area and structure to satisfy this criterion.

4. Consideration of site design including underground utilities

The petitioners will maintain the existing brick façade of the station, with a new roof and more glazing being the only changes. The petitioners should be expected to provide all utilities underground.

H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use.

The service station has been in existence at this site for over 84 years and the self-service with a mini mart is an appropriate use with the improvement of the parking facility.

2. The use as developed and operated will not adversely affect the neighborhood.

The proposed change to a self-service station with a mini mart with a new parking facility should not adversely affect the neighborhood in that the use is a minimal change and the parking facility should increase safety of vehicular and pedestrian movements on and off the site.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The proposed improvements should not impact the convenience or safety of vehicular and pedestrian movement. The Planning Department believes that the use and new parking area as designed will provide better on site circulation.

4. Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved.

The finished improvements will provide 6 additional parking stalls, and should create an improved internal circulation for safer pedestrian movement to and from vehicles.

VII. SUMMARY

The Planning Department believes that the proposed self service gas station with a "Hess Express" mart and new parking facility would be an improvement for the site and neighborhood by upgrading the site and building, increasing internal circulation, as well as improve safety for users while removing the auto repair component. This combined with the upgrading of landscaping should be an improvement for the neighborhood. The Planning Department sees the site as a "Gateway " to the City of Newton that should provide an improved visual quality to this portion of the Commonwealth Avenue corridor; however, the department remains concerned about the number of size of proposed signs.

Zoning Review Memorandum

Dt: August 7, 2007

To: Stephen Buchbinder, representing Amerada Hess

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services

Re: **Renovated gasoline service station, retail convenience store, and related site and signage improvements.**

Applicant: Amerada Hess	
Site: 2370 Commonwealth Ave.	SBL: Section 41, Block 9, Lot 1A
Zoning: MR-2	Lot Area: 16, 300 sq. ft. [GIS] 15,904 sq. ft. [per plan]
Prior use: Gasoline service station	Prop. use: Gasoline service station

Background:

Upon adoption of zoning in 1922, the subject site was zoned Business, which accommodated gasoline selling use subject to special permit. Subsequently a special permit was issued in 1923 for a "gasoline selling station", which has apparently continued to the present time. In 1947, the City issued Building Permit #1978 Ser.# 497 for a 3 car garage and office building. Thereafter, on September 12, 1949, the site was rezoned General Residence, then to Residence D in July 21, 1951. As the site remained in residential zoning, and is currently zoned Multi-Residence 2, which does not allow gasoline service stations (current terminology), the "gasoline service station" use became nonconforming. Over the years, the site was granted various special permits pertaining to signs, pumping station islands, self-service, and overhead canopies (including two variances). These board orders and variances together govern this site, but do not authorize retail use. The applicant represents that sales of convenience items have occurred since approximately 1975 and have increased over time. February 24, 2006, the Commissioner of Inspectional Services denied a request by the applicant to allow renovation of the subject building for expansion of convenience retail sales, rescinded Building Permit #05080945 dated 8/26/2005, deemed to have been issued in error by the City, and instead directed the applicant to seek a special permit for extension of non-conforming use and/or change in nonconforming use. The applicant now seeks Board of Aldermen approval to renovate the existing building and site, eliminate existing repair service and expand the retail food and convenience sales area, and alter certain signs. The project involves the amendment of prior board orders and additional special permits pursuant to Section 30-21(b), for change and/or extension of non-conforming use, parking waivers pursuant to Section 30-19(m), and request for certain signs pursuant to Section 30-20(l).

Summary of Urban Design and Beautification Commission Comments

Certain replacement signs were previously approved by the Urban Design and Beautification Commission in connection with re-branding to a Hess service station. Deemed to be consistent with prior Board Orders, four replacement signs were authorized pursuant to Building Permit #05110898 dated 11/30/2005, but not installed. The applicant now seeks to alter certain of the sign faces, seeks approval of a taller freestanding sign, and also approval of a larger canopy mounted sign. In addition, approval of certain directional signs is requested. These signs have been scheduled for review by the Urban Design and Beautification Commission on August 15, 2007, consistent with applicable permitting procedures. Following review, the Commission will transmit its recommendations to the City.

Administrative determinations

1. Multiple Board Orders along with two variances (see Reference materials, below) together govern the subject site. The current petition will necessitate amendments, respectively, to such prior Board Orders and plans as affected by the proposed changes.
2. The original special permit issued May 23, 1923 for a "Gasoline selling station" was based on the definition found in Revised Ordinances of 1922, Chapter XXXII, Section 573, paragraph 3, which allowed gasoline sales and certain ancillary supplies, but prohibited repairs. Subsequently, the Public Buildings Department authorized construction of a facility comprised of a 3-car garage and office pursuant to Building Permit #1078 Ser #497, dated July 14, 1947. While the this Building Permit bears a faint reference to old document numbers [Petition #89153 and report #89484], these documents have as yet not been located in the City's archives. With rezoning to General Residence in 1949, and successor residence zones, the gasoline selling use as well as repair use became legal non-conforming uses. However, as the applicant plans to eliminate the repair use, no further extension of this use is necessary or requested.
3. Board Order #1-01 provides for two full service pumps on the Auburn St. side. However, the applicant has indicated that all pumps except one on the Auburn St. side are self-service. The petitioner seeks to convert the existing gasoline service station to an entirely self-serve operation. This necessitates amendment of the above-referenced Board Order and related plans of record referenced in Condition #1. For context, it is noted that self-serve gasoline uses require an additional special permit in the BU-2 zone, the only zone where gasoline service stations are normally allowed subject special permit. [See Section 30-11(g)(1)].
4. The petitioner represents that sales of convenience items have occurred since 1975, and has provided Health Department licenses dating to 1999 authorizing food sales. However, in order to be considered a legal non-conforming use, such use needs to have occurred while the property was still zoned Business, pre-dating the initial rezoning to General Residence on September 12, 1949. Moreover, none of the Board Orders, Variances and related plans refer to retail food or convenience sales, nor grant extension of a non-conforming use to conduct retail sales at this site. In addition, it is noted for context that in the BU-2 zone where gasoline service stations are allowed subject to special permit, an additional special permit is required in order to authorize retail outlets accessory to a gasoline station [See Section 30-11(g)(1)]. The applicant seeks to eliminate the existing auto repair service while significantly increasing gross floor area for retail convenience sales. However, the currently existing retail use seems to have been introduced after the

site was rezoned to a residential district, and has apparently operated without benefit of any occupancy permit or special permit. As a result, said use appears to be non-compliant, and zoning relief by special permit from the Board of Aldermen granting extension of non-conforming use pursuant to Section 30-21(b) would not apply in this case. However, the applicants may wish to consider providing such additional documentation as will conclusively establish the origins of the retail accessory use and its possible non-conforming status.

Nevertheless, Section 30-21(b) also provides that an existing nonconforming use may be changed to another nonconforming use subject to special permit. Based on information received to date, it appears that the proposed Hess Express convenience retail operation will be significantly different as to size, and will operate in conjunction only with a proposed fully self-serve gasoline establishment. These characteristics suggest zoning relief available under Section 30-21(b) pertaining to the change of an existing valid nonconforming use to another nonconforming use may apply. In this scenario, a gasoline service station dispensing full serve and self-serve gasoline in conjunction with auto repair service would be changed to a different nonconforming use consisting of an entirely self-serve gasoline use together with a retail convenience establishment, subject to grant of special permit by the Board of Aldermen.

5. *Section 30-20(l) Exceptions*, provide that a special permit is required for standing signs and establish dimensional parameters. Board Order #590-76 approved a single-pole 16 ft. high free-standing Shell sign, replaced some years later by a 15 ft. – 4 in. high Mobil sign authorized by Board Order #157-92 which also approved the addition of pricing panels. Subsequently the City issued Building Permit #5123 Sec. 1293 authorizing a 17 ft. high twin-pole replacement Mobil sign October 25, 1996. More recently, the UDB Commission approved a 16 ft. high Hess replacement sign, which was subsequently issued under Building Permit #05110898 dated 11/30/2005. The applicant now seeks a 17 ft. – 8 in. high twin-pole refaced Hess sign. As the sign exceeds the maximum height of 16 ft. and proposed sign area has 42.4 sq. ft. exceeding the limit of 35 sq. ft., approval of the Board of Aldermen is required pursuant to Section 30-20(l). Moreover, Board approval is also needed to exceed the 15 sq. ft. area limitation applicable to a freestanding sign serving a valid nonconforming use in a residential zone. Finally, amendments will be necessary to the Board Orders referenced above, authorizing the previous freestanding sign.
6. The applicant also seeks approval of two “Hess Express” wall signs. Such signs are subject to Section 30-20(e)(4) establishing sign parameters for valid nonconforming uses in a residential zone. For context, it is noted that the currently existing “Mobil Mart” sign (to be removed) appears to have been installed without benefit of any permit. As only one wall sign not exceeding 20 sq. ft. in area is allowed, approval by the Board of Aldermen pursuant to Section 30-20(l) is required. In addition, these signs will direct customers to the convenience retail operation, which must first be approved by the Board of Aldermen as discussed in paragraph 4, above, and are contingent upon such approval.
7. Two directional signs, including a HP parking sign and a Stop sign are also requested. As the proposed Stop sign of 6.2 sq. ft. exceeds the 3 sq. ft. limit established in Section 30-20(e)(5) pertaining to such signs in a residential zone, approval by the Board of Aldermen pursuant to Section 30-20(l) is necessary.

8. While at one time the east-facing canopy-mounted "Mobil" sign on the Commonwealth Ave. side canopy was thought to have been authorized, it's history and documentation are unclear. Canopy signs are today considered "wall" signs. As such, the proposed canopy sign would exceed the number of wall signs allowed per Section 30-20(e)(4) in a residential zone, as also discussed in paragraph 6, above. While a replacement Hess sign was permitted in 2005, the applicant now seeks to again replace the previously permitted Hess canopy sign with a revised canopy logo sign having a long non-illuminated green stripe around the canopy perimeter. Should the green stripe be illuminated, it would be considered part of the sign and necessitate additional approval from the Board of Aldermen for an extended wall sign. The currently proposed canopy sign would necessitate amendment to such Board Order and plan as may have originally authorized said sign, if at all. In any event, the additional canopy (wall) sign needs approval of the Board under Section 30-20(l). No canopy sign has been requested for the canopy on the Auburn St. side.
9. Section 30-19(d), *Number of Parking Stalls*, paragraph (10) establishes the required parking for retail and service establishments. The City concurs with the petitioner's analysis that 8 parking stalls are required. Proposed plans indicate 9 stalls will be provided, including one HP stall as required by Section 30-19(h)(1)c).
10. Section 30-19(h), *Design of Parking Facilities*, establishes the design and layout requirements for parking facilities having more than 5 stalls. Paragraph (h)(1) prohibits parking within any required setback, in this case the 7.5 ft. side setback required for lots created prior to 1953 located in the MR-2 zone. As proposed stalls 7, 8, and 9 are located 5 ft. from the lot line, this necessitates a waiver from the Board of Aldermen pursuant to Section 30-19(m). While the applicant has provided an affidavit attesting that cars have been parked in the area of stalls 6 – 9, plans of record associated with board orders going back to B.O. #590-76 do not indicate parking here. However, the Board of Aldermen may at its discretion approve such new site plan as proposed incorporating any waivers also approved pursuant to Section 30-19(m).

Paragraph (h)(2) requires minimum stall size to be 9 ft. x 19 ft. for angle parking, as indicated in this case. As proposed standard stall 1 is two feet short, and standard stalls 3 – 9 are 1 ft. short, this necessitates a waiver from the Board of Aldermen per Section 30-19(m). In addition, stall 2 (HP) is also 1 ft. short, also requiring a waiver. Alternatively, the applicant may wish to increase stall size to required dimensions, particularly in regard to the HP stall.

Paragraph (h)(3) establishes the applicable maneuvering aisle widths. Proposed plans meet these requirements.

Paragraph (h)(4) establishes the applicable widths of exit and entrance driveways. It is noted that while multiple existing drive entrances and exits exist which exceed the allowable maximum 25 ft. width; these have been approved per plans authorized under prior board orders. One entrance from Auburn St. proposed to be narrowed to 24 ft. meets the maximum requirement. The proposed alteration necessitates Board of Aldermen approval to amend the most recent site plans of record approved per B.O. #01-01, Condition 1 and #226-02, Condition 1.

Paragraph (h)(5)a requires access to parking stalls without the necessity of moving any other vehicle. As proposed plans indicate an area proposed for an air tower immediately ahead of and within the maneuvering approach to stall 6, this may cause situations where stall 6 is not available. In addition, stalls 5 and 6 are located immediately in front of the proposed trash enclosure gates. This arrangement requires approval by the Board of Aldermen pursuant to Section 30-19(m).

11. Section 30-19(i), *Landscaping*, paragraph (1) establishes the perimeter screening standards for parking facilities of this size, typically requiring a 5 ft. wide strip with densely planted shrubs or trees at least 3.5 ft. tall designed to provide a year-round screen. The submitted landscape plan indicates a landscape strip segment along the mutual lot line having only 2 ft. width. In addition, the planting schedule contains largely plant materials not meeting minimum height. The petitioner may wish to revise the proposed screening plan to meet standard requirements, or alternatively seek a waiver from the Board of Aldermen per Section 30-19(m). Moreover, the proposed new landscaping plan necessitates Board of Aldermen approval to amend the most recent landscaping plan of record. In addition, the applicant is responsible for ensuring that the proposed plan meets the applicable requirements of Section 20-31 through 20-39, *Tree Preservation Ordinance*.
12. Section 30-19(j), *Lighting, Surfacing, and Maintenance of Parking Facilities*, paragraph (1) establishes the applicable lighting standards to parking facilities of this size. The submitted Lighting Proposal indicates a lighting level substantially above required security lighting levels and substantially different from the lighting plan adopted in conjunction with B.O. #226-02, Condition 5. In addition, significant spillover occurs along both Commonwealth Ave. and Auburn St., as well as into the abutting multi-residence parcel. As paragraph (1)b prohibits glare upon streets and abutting properties, the petitioner may wish to revise the lighting scheme, or request a waiver pursuant to Section 30-19(m). In addition, the petitioner is responsible for complying with Ordinance X-142, Light Ordinance, as set out in Sections 20-23 through 20-28 with respect to *Light Pollution* and *Light Trespass*, respectively. A recent site visit at night noted a high level of brightness emanating from canopy lighting. While the applicant has indicated revised lighting plans will be submitted, these have as yet not been received for review. In addition, the applicant has indicated that a certain number of "yard lights" will be installed and shown on a revised site plan (not yet received). In the event such lights are located on poles within required setbacks, additional waivers will be necessary pursuant to Section 30-19(m).
13. The proposed new signs meet the illumination requirements of Section 30-20(i)(1)-(3). It is also noted that signs need to comply with Section 30-20(i)(4) which states that signs may not be illuminated during the hours of 11:00 pm to 7:00 am, unless an exception is petitioned and obtained from the Board of Aldermen pursuant to Section 30-20(l) and 30-24(d), special permit.
14. See "Zoning Relief Summary" below.

Zoning Relief Summary		
Ordinance		Action Required
	Directional Signs	
30-20(e)(5) 30-20(l)	Approval of 6.2 sq. ft. Stop sign exceeding 3 sq. ft. limit in a residential zone, per plans.	X
	Freestanding Signs	
30-20(e)(4) 30-20(l)	Approval of new freestanding sign with "Hess" identification logo for valid nonconforming use in a residential zone.	X
30-20(e)(4) 30-20(l)	Approval of freestanding sign exceeding 15 sq. ft. in area, for valid nonconforming use in a residential zone.	X
30-20(l)	Approval of freestanding sign exceeding 35 sq. ft. in area, and exceeding 16 ft. in height per submitted plans.	X
30-20(l)	Approval of price panels on free standing "Hess" identification sign, per submitted plans.	X
	Wall Signs	
30-20(e)(4) 30-20(l)	Approval of two wall signs with "Hess Express" located on the north and south building elevations, respectively, per submitted plans. Includes additional sign beyond the one wall sign allowed for a valid nonconforming use in a residential zone.	X
30-20(e)(4) 30-20(l)	Approval of another additional wall sign with "Hess" logo located on the east elevation of Comm. Ave. canopy, per plans.	X
	Change of nonconforming use	
30-21(b)	Approval to change nonconforming use from combined gasoline service station/auto repair garage to combination entirely self-serve gasoline service station/retail convenience store.	X
	Parking	
30-19(h)(1) 30-19(m)	Waiver to reduce setback for stalls 7, 8, and 9 from 7.5 ft. to 5 ft. along the side lot line.	X
30-19(h)(2)b 30-19(m)	Waiver to reduce stall length from 19 ft. to 18 ft. for stalls 3 – 9, and from 19 ft. to 17 ft. for stall 1.	X
30-19(h)(2)c 30-19(m)	Waiver to reduce stall length from 19 ft. to 18 ft. for HP stall 2.	X
30-19(h)(5)a 30-19(m)	Waiver to allow air tower parking space ahead of and within approach to parking stall 6.	X
30-19(h)(5)a 30-19(m)	Waiver to allow parking stalls 5 and 6 immediately in front of trash enclosure gates.	X
30-19(i)(1) 30-19(m)	Waiver to reduce side yard landscape strip from 5 ft. to 2 ft. wide for segment of perimeter screening.	X
30-19(j)(1)b 30-19(m)	Waiver to allow spillover of lighting onto adjacent streets and abutting residential lot, but not exceeding requirements of Light Ordinance	X
30-19(h)(1) 30-19(m)	Waiver to the extent necessary, to reduce setback for possible light poles which may be located within applicable setbacks.	TBD*
	Site	
30-23	Amend plans approved pursuant to BO# 609-59, 699-65, 590-76,	X

	157-92, 1-01, and 226-02, to the extent necessary.	
30-23	Approval of site plan describing renovated site, incorporated waivers, and all sign locations.	X

Zoning Relief Summary (cont.)		
Ordinance		Action Required
	Site (cont.)	
30-23	Approval of sign plan for proposed main freestanding sign.	X
30-23(b)(8)	Approval of building elevation plans and canopy elevation plans pertaining to placement of wall and canopy signs and sign plans for each sign.	X
30-23	Approval of sign plans for directional signs.	X
30-23(b)(6)	Approval of landscape plan.	X
	Special Permit	
30-24(d) Prior BO	Amend prior Board Order BO# 609-59, 699-65, 590-76, 157-92, 1-01, and 226-02, to the extent necessary.	X
30-24(d) BO1-01, Cond. 1	Amend B.O. #1-01, Condition #1 pertaining to limitations on self-serve gasoline pumps.	X
30-24(d)	Approval of applicable exceptions and special permit(s).	X

*TBD = To be determined.

Reference materials

- Letter from City Clerk to Norumbega Park Co., May 23, 1923 advising approval of special permit for gasoline selling station.
- Board Orders #609-59, June 22, 1959; #699-65, Nov. 15, 1965; and #590-76, Sept. 7, 1976 pertaining to signs.
- Petition #180-75 to rezone the site to a Business 2 zone – denied.
- Board Order #157-92, June 1, 1992 authorizing conversion of one pump island to self service and construction of overhead canopy over Commonwealth Ave. side pumps subject to variance for canopy setback.
- Variance #21-92, decision filed with the City Clerk Oct. 28, 1992 approving reduced setback in connection with BO#157-92.
- Board Order #91-98 authorizing canopy over Auburn St. side pumps subject to variance for canopy setback.
- Variance #19-98 seeking setback reduction in connection with BO#91-98, denied; decision filed with the City Clerk July 15, 1998.
- Board Order #1-01, May 7, 2001, authorizing addition of full-service pump and revised location of pumps on Auburn St. side.
- Board Order #226-02, August 12, 2001 authorizing construction of overhead canopy over Auburn St. side pumps subject to variance for canopy setback.
- Variance #30-02, filed with the City Clerk Dec. 26, 2002 authorizing reduced setback in connection with BO #226-02.
- Affidavit of Donald F. Lunny, Jr., dated June 27, 2007 pertaining to parking.

Plans reviewed:

Plan set titled "Site Improvement Plans for Amerada Hess Corporation at 2370 Commonwealth Ave., Newton, MA", prepared by Ayoub Engineering, 44 Benefit Street, Pawtucket, RI, 02861, dated variously as noted below, signed and stamped by Steven Pedro, Registered Architect, except where otherwise noted by NS (no stamp or signature) consisting of the following:

- Sheet 00 – Cover Sheet, 7/6/05, NS
- Sheet AP-1 – Area Plan, 6/15/07
- Sheet EX-1 – Existing Site Plan, 5/16/07
- Sheet C-1 – Site Improvement Plan, last revised 6/14/07
- Sheet L-1 – Site Landscape Plan, last revised 6/14/07
- Sheet A-1 – Proposed Floor Plan, last revised 6/15/07
- Sheet A-2 – Proposed Elevations, last revised 5/16/07
- Sheet SG-1 – Sign and Graphics Plan, last revised 7/24/07, NS

Plan titled "Lighting Proposal for Hess, Commonwealth Ave. & Auburn St., Newton, MA", dated 7/12/07, prepared by LSI Industries, 10000 Alliance Rd., PO Box 42728, Cincinnati OH 45242, bearing no stamp or signature.



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS
FIRE DEPARTMENT HEADQUARTERS

1164 Centre Street, Newton Center, MA 02459-1584
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230
FAX: (617) 796-2211 EMERGENCY: 911



Joseph E. LaCroix
Chief

August 8, 2007

RECEIVED

AUG 13 2007

SCHLESINGER AND BUCHBINDER

Alderman George Mansfield, Chairman
Land Use Committee
Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

RE: Hess Express, 2370 Commonwealth Avenue

Dear Alderman Mansfield:

The Fire Department has reviewed and approved the site plan for the Hess Express at 2370 Commonwealth Avenue.

The plan meets with our approval for accessibility and water with no conditions attached.

Very truly yours,

A handwritten signature in black ink, appearing to read "AIC BR".

Bruce A. Proia
Assistant Chief of Operations

BAP/cf

cc: ✓ Stephen Buchbinder, Schlesinger & Buchbinder, LLP
1200 Walnut Street, Newton, MA 02461-1267
Planning Department, City of Newton
Deputy Chief James Thorne, Newton Fire Prevention Bureau